THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.3713 of 2005

18.11.2006

Between:

P. Pitchaiah

..Petitioner

And

The Deputy Registrar of Co-operative Societies, Guntur, Guntur District. and another

..Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.3713 of 2005

ORDER:

It appears, the petitioner was appointed as Secretary under 'Half a Million Job Scheme' in the year 1979. After working in various societies, he has been working in the Karlapudi P.A.C.S., Amaravathi Mandal, Guntur District, from 1988 onwards till date, without any remark. While so, a regular inspection was conducted under Section 52 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"). Several irregularities have been detected. It seems, some suspicion as to the involvement of the petitioner was also indicated, apart from the members of the committee and the President of the society. In view of the same, surcharge proceedings have been initiated. During the pendency of the surcharge proceedings, without there being any finding as to the guilt, or otherwise of the petitioner, a criminal prosecution was launched against him. Further, no prior sanction as required under Section 83(3) of the Act, was obtained before issuing the impugned proceedings. Therefore, the petitioner filed the present Writ Petition seeking a *Mandamus* to declare the impugned proceedings, dated 30.12.2004, as illegal and arbitrary.

A counter-affidavit has been filed by the 1st respondent. It is asserted that after examining the preliminary enquiry report, the District Cooperative Officer, Guntur, noticed several serious financial irregularities in the working of Karlapudi P.A.C.S., and ordered inspection under Section 52 of the Act, into the constitution, working and financial position of Karlapudi P.A.C.S. The petitioner himself subjected to the inspection proceedings and never questioned about the ordering of inspection by the Registrar/District Co-operative Officer, Guntur, and conduct of the same by the Sub Divisional Cooperative Officer, Guntur, at any stage. A criminal complaint was filed on

30.12.2004 strictly in accordance with the Act and the Rules made thereunder, in the interest of the Cooperative Movement. The pendency of the surcharge proceedings initiated against the petitioner has nothing to do with the criminal complaint. When a criminal offence is noticed, criminal complaint can be lodged and there is no need to wait till the civil action is completed. Hence, complaint dated 15.12.2004 is just and proper. However, the allegation that no prior sanction as required under Section 83(3) of the Act was not met with.

It is settled proposition of law that unless and until the proceedings initiated under Section 60 of the Act are concluded, the question of filing a criminal complaint on the basis of inspection report, does not arise. Apart from that, in this case, admittedly, no prior sanction as required under Section 83(3) of the Act, was obtained.

In view of the above, the writ petition is liable to be allowed, and the same is accordingly allowed. The proceedings *vide* Rc.No.1795/2002-B3, dated 30.12.2004, are declared as arbitrary and illegal, and as such, are set aside. There shall be no order as to costs.

_____

(C.V.RAMULU, J)

18.11.2006

GJ